



April 10, 2015

ENGROSSED

SENATE BILL No. 408

DIGEST OF SB 408 (Updated April 8, 2015 4:55 pm - DI 107)

Citations Affected: IC 25-34.1; IC 27-7; IC 32-28; IC 34-30.

Synopsis: Real estate brokers and broker companies. Defines "broker company" as a partnership, limited liability company, corporation, or individual acting as a sole proprietorship that is licensed as a broker and, for consideration, undertakes or offers to undertake certain activities with respect to real estate. Provides that an individual, to obtain a broker license, must associate with a broker company (instead of with a managing broker). Provides that a partnership, a limited liability company, or a corporation, to obtain a broker license, must include a licensed broker who qualifies as a managing broker. Defines "managing broker" as an individual who is a broker and whom the real estate commission holds responsible for the actions of the licensees affiliated with the broker company. Provides that an individual, to become a managing broker, must have held an active broker's license for at least two years. Requires a person conducting a broker course to have a permit issued by the real estate commission. Defines "in-house agency relationship" as an agency relationship involving two or more clients who are represented by different licensees within the same

(Continued next page)

Effective: July 1, 2014 (retroactive); July 1, 2015.

Merritt, Houchin, Broden, Randolph

(HOUSE SPONSORS — MORRIS, HALE)

January 12, 2015, read first time and referred to Committee on Commerce & Technology.

January 20, 2015, amended, reported favorably — Do Pass.

February 3, 2015, read second time, amended, ordered engrossed.

February 4, 2015, engrossed.

February 5, 2015, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 3, 2015, read first time and referred to Committee on Commerce, Small Business and Economic Development.

April 9, 2015, amended, reported — Do Pass.

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Digest Continued

broker company. Provides that, in an in-house agency relationship, an individual licensee affiliated with a broker company represents only the client with which the licensee is working. Removes Indiana residency as a prerequisite for corporation broker licenses and manager-managed limited liability companies. Provides that a licensed real estate broker is not liable for certain real estate related reports, statements, or information except in certain circumstances. Adds a reference to the list of statutes that grant immunity from civil liability. Makes additional changes concerning brokers and broker companies and corresponding changes in current law.



April 10, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 408

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 25-34.1-1-2, AS AMENDED BY P.L.200-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 2. As used in this article:
4 (1) "Person" means an individual, a partnership, a corporation, or
5 a limited liability company.
6 (2) "Commission" means the Indiana real estate commission.
7 (3) "Real estate" means any right, title, or interest in real property.
8 (4) "Broker" means a person who:
9 (A) for consideration, sells, buys, trades, exchanges, options,
10 leases, rents, manages, lists, or appraises real estate or
11 negotiates or offers to perform any of those acts; and
12 (B) is acting in association with and under the auspices of a
13 managing broker **and broker company**.
14 (5) "License" means a broker license issued under this article and

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which is not expired, suspended, or revoked.

(6) "Licensee" means a person who holds a license issued under this article. The term does not include a person who holds a real estate appraiser license or certificate issued under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.

(7) "Course approval" means approval of a broker course granted under this article which is not expired, suspended, or revoked.

(8) "Licensing agency" means the Indiana professional licensing agency established by IC 25-1-5-3.

(9) "Board" refers to the real estate appraiser licensure and certification board established under IC 25-34.1-8-1.

(10) "Commercial real estate" means a parcel of real estate other than real estate containing one (1) to four (4) residential units. This term does not include single family residential units such as:

- (A) condominiums;
- (B) townhouses;
- (C) manufactured homes; or
- (D) homes in a subdivision;

when sold, leased, or otherwise conveyed on a unit-by-unit basis, even if those units are part of a larger building or parcel of real estate containing more than four (4) residential units.

(11) "Out-of-state commercial broker" includes a person, a partnership, an association, a limited liability company, a limited liability partnership, or a corporation that is licensed to do business as a broker in a jurisdiction other than Indiana.

(12) "Out-of-state commercial salesperson" includes a person affiliated with an out-of-state commercial broker who is not licensed as a broker under this article.

(13) "Managing broker" refers to ~~a~~ **an individual** broker whom the commission holds responsible for the actions of licensees who are affiliated with the ~~managing~~ broker ~~and who meets the requirements of IC 25-34.1-4-0.5:~~ **company.**

(14) "Broker company" means **a licensee that is a business engaged in the activities described in IC 25-34.1-3-2(a), whether as a sole proprietorship, a partnership, a limited liability company, or a corporation. In the case of a broker company that is a sole proprietorship, the individual broker who is the sole proprietor is the broker company and the managing broker for the broker company.**

SECTION 2. IC 25-34.1-3-4.1, AS AMENDED BY P.L.127-2012, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2015]: Sec. 4.1. (a) To obtain a broker license, an individual must:

(1) be at least eighteen (18) years of age before applying for a license and must not have a conviction for:

(A) an act that would constitute a ground for disciplinary sanction under IC 25-1-11;

(B) a crime that has a direct bearing on the individual's ability to practice competently; or

(C) a crime that indicates the individual has the propensity to endanger the public;

(2) have a high school diploma or a general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18;

(3) have successfully completed an approved broker course of study as prescribed in IC 25-34.1-5-5;

(4) apply for a license by submitting the application fee prescribed by the commission and an application specifying:

(A) the name, address, and age of the applicant;

(B) the ~~name under broker company with~~ which the applicant intends to ~~conduct business associate~~;

(C) the address ~~where the business is to be conducted~~; **of the broker company**;

(D) proof of compliance with subdivisions (2) and (3); and

(E) any other information the commission requires;

(5) pass a written examination prepared and administered by the commission or its duly appointed agent; and

(6) within one (1) year after passing the commission examination, submit the license fee established by the commission under IC 25-1-8-2. If an individual applicant fails to file a timely license fee, the commission shall void the application and may not issue a license to that applicant unless that applicant again complies with the requirements of subdivisions (4) and (5) and this subdivision.

(b) To obtain a broker license, a partnership must:

(1) have as partners only individuals who are licensed brokers;

(2) have at least one (1) partner who

~~(A) is a resident of Indiana; or~~

~~(B) is qualifies as a managing broker under IC 25-34.1-4-3(b);~~

IC 25-34.1-4-0.5 and IC 25-34.1-4-3;

(3) cause each employee of the partnership who acts as a broker to be licensed; and

(4) submit the license fee established by the commission under



1 IC 25-1-8-2 and an application setting forth the name and
 2 residence address of each partner and the information prescribed
 3 in subsection (a)(4).

4 (c) To obtain a broker license, a corporation must:

5 (1) have a licensed broker

6 ~~(A) residing in Indiana who is either an officer of the~~
 7 ~~corporation or; if no officer resides in Indiana; the highest~~
 8 ~~ranking corporate employee in Indiana with authority to bind~~
 9 ~~the corporation in real estate transactions; or~~

10 ~~(B) who is~~ **qualifies as** a managing broker under
 11 ~~IC 25-34.1-4-3(b); IC 25-34.1-4-0.5 and IC 25-34.1-4-3;~~

12 (2) cause each employee of the corporation who acts as a broker
 13 to be licensed; and

14 (3) submit the license fee established by the commission under
 15 IC 25-1-8-2, an application setting forth the name and residence
 16 address of each officer and the information prescribed in
 17 subsection (a)(4), a copy of the certificate of incorporation, and a
 18 certificate of good standing of the corporation issued by the
 19 secretary of state.

20 (d) To obtain a broker license, a limited liability company must:

21 (1) if a member-managed limited liability company:

22 (A) have as members only individuals who are licensed
 23 brokers; and

24 (B) have at least one (1) member who is:

25 ~~(i) a resident of Indiana; or~~

26 ~~(ii) qualifies as~~ a managing broker under ~~IC 25-34.1-4-3(b);~~
 27 **IC 25-34.1-4-0.5 and IC 25-34.1-4-3;**

28 (2) if a manager-managed limited liability company, have a
 29 licensed broker

30 ~~(A) residing in Indiana who is either a manager of the~~
 31 ~~company or; if no manager resides in Indiana; the highest~~
 32 ~~ranking company officer or employee in Indiana with authority~~
 33 ~~to bind the company in real estate transactions; or~~

34 ~~(B) who is~~ **qualifies as** a managing broker under
 35 ~~IC 25-34.1-4-3(b); IC 25-34.1-4-0.5 and IC 25-34.1-4-3;~~

36 (3) cause each employee of the limited liability company who acts
 37 as a broker to be licensed; and

38 (4) submit the license fee established by the commission under
 39 IC 25-1-8-2 and an application setting forth the information
 40 prescribed in subsection (a)(4), together with:

41 (A) if a member-managed company, the name and residence
 42 address of each member; or



(B) if a manager-managed company, the name and residence address of each manager, or of each officer if the company has officers.

(e) Licenses granted to partnerships, corporations, and limited liability companies are issued, expire, are renewed, and are effective on the same terms as licenses granted to individual brokers, except as provided in subsection (h), and except that expiration or revocation of the license of:

(1) any partner in a partnership or all individuals in a corporation satisfying subsection (c)(1); or

(2) a member in a member-managed limited liability company or all individuals in a manager-managed limited liability company satisfying subsection (d)(2);

terminates the license of that partnership, corporation, or limited liability company.

(f) Upon the applicant's compliance with the requirements of subsection (a), (b), or (c), the commission shall issue the applicant a broker license and an identification card which certifies the issuance of the license and indicates the expiration date of the license. The license shall be displayed at the broker's place of business. For at least two (2) years after the issuance of a license, the ~~license must be assigned to individual~~ **cannot be** a managing broker. An individual who applies for a broker's license after June 30, 2014, must, during the first two (2) years after the license is issued, take and pass at least thirty (30) hours of postlicensing education focused on the practical matters of real estate transactions instead of the continuing education requirements under IC 25-34.1-9.

(g) Unless the license is renewed, a broker license expires, for individuals, on a date specified by the licensing agency under IC 25-1-6-4 and expires three (3) years after the initial expiration date. An applicant for renewal shall submit an application in the manner prescribed by the commission and pay the renewal fee established by the commission under IC 25-1-8-2 on or before the renewal date specified by the licensing agency. If the holder of a license does not renew the license by the date specified by the licensing agency, the license expires and becomes invalid without the commission taking any action.

(h) If the holder of a license under this section fails to renew the license on or before the date specified by the licensing agency, the license may be reinstated by the commission if the holder of the license, not later than three (3) years after the expiration of the license, meets the requirements of IC 25-1-8-6(c).



(i) If a license under this section has been expired for more than three (3) years, the license may be reinstated by the commission if the holder meets the requirements for reinstatement under IC 25-1-8-6(d).

(j) A partnership, corporation, or limited liability company may ~~not~~ be **only** a broker **company**, except as authorized in IC 23-1.5. An individual broker who associates with a ~~managing~~ broker **company** shall immediately notify the commission:

(1) of the name and business address of the ~~managing~~ broker **company with which the individual broker is associating**; and

(2) of any changes of ~~managing the broker company with which the individual broker is associated~~ that may occur.

Upon receiving notice under subdivision (1) or (2), the commission shall ~~then~~ change the address of the **individual** broker on its records to that of the ~~managing~~ broker **company**.

SECTION 3. IC 25-34.1-3-5, AS AMENDED BY P.L.127-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) A resident of another state ~~meeting who meets~~ the requirements of this chapter may be licensed.

(b) A nonresident broker shall file with the commission a written consent that any action arising out of the conduct of the licensee's business in Indiana may be commenced in any county of this state in which the cause of action accrues. The consent shall provide that service of process may be made upon the commission, as agent for the nonresident licensee, and that service in accordance with the Indiana Rules of Trial Procedure subjects the licensee to the jurisdiction of the courts in that county.

(c) The requirements of ~~this section~~ **subsections (a) and (b)** may be waived for individuals ~~of who reside in~~ or **are** moving from other jurisdictions if the following requirements are met:

(1) The jurisdiction grants the same privilege to the licensees of this state.

(2) The individual is licensed in that jurisdiction.

(3) The licensing requirements of that jurisdiction are substantially similar to the requirements of this chapter.

(4) The applicant states that the applicant has studied, is familiar with, and will abide by the statutes and rules of this state.

However, subdivision (1) need not be met in order for the requirements of subsections (a) and (b) to be waived in the case of an individual moving to Indiana from another jurisdiction.

SECTION 4. IC 25-34.1-4-0.5, AS ADDED BY P.L.127-2012, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 0.5. Except as provided in section 6 of this



chapter, to become a managing broker, an individual must:

- (1) hold ~~a~~ **an active** broker's license for at least two (2) years; and
- (2) take and pass at least twenty-four (24) hours of broker management courses approved by the commission.

SECTION 5. IC 25-34.1-4-1, AS AMENDED BY P.L.127-2012, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. A **broker company and its** managing broker ~~is are~~ responsible under this article for the actions of any broker who is associated with the ~~managing~~ **broker company**. Any ~~managing~~ **broker who company that** maintains two (2) or more separate offices for associated licensees shall notify the commission of the name and address of the broker who manages each office.

SECTION 6. IC 25-34.1-4-2, AS AMENDED BY P.L.127-2012, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. Except as provided in IC 23-1.5, a partnership broker, corporate broker, or limited liability company broker:

- (1) may act only as a ~~managing~~ **broker company**; and
- (2) shall designate to the commission a ~~licensed individual managing~~ **broker who is a partner or a corporate representative satisfying IC 25-34.1-3-4.1(c)(1) or a member-managed limited liability company member or a manager-managed limited liability company representative satisfying IC 25-34.1-3-4.1(d)(2); meets the requirements for managing brokers set forth in IC 25-34.1-3-4.1** to be primarily responsible to the commission for its actions.

SECTION 7. IC 25-34.1-4-3, AS AMENDED BY P.L.127-2012, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) Except as provided in subsection (b), each individual who is a managing broker ~~or is designated by a partnership, corporation, or a limited liability company pursuant to section 2 of this chapter~~ shall be a resident of Indiana.

(b) A nonresident

- (1) ~~individual broker; or~~
- (2) ~~individual designated by a partnership, corporation, or limited liability company under section 2 of this chapter;~~

may be a managing broker if ~~all~~ **none of** the licensees ~~affiliated associated~~ with the ~~broker, partnership, corporation, or limited liability company managing broker's broker company~~ are ~~not~~ residents of Indiana.

SECTION 8. IC 25-34.1-4-3.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014 (RETROACTIVE)]: **Sec. 3.1. An**



individual who, on June 30, 2014, was:

(1) a principal broker; or

(2) the designated individual broker under IC 25-34.1-4-2 (as in effect on June 30, 2014) of a partnership broker, corporate broker, or limited liability company broker;

became a managing broker on July 1, 2014.

SECTION 9. IC 25-34.1-4-4, AS AMENDED BY P.L.127-2012, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. Notwithstanding IC 23-1.5, the association of a broker with a managing broker company, as provided by this article, creates an independent contractor relationship unless otherwise specified by a written contract entered into by the managing broker company and the broker.

SECTION 10. IC 25-34.1-4-5, AS AMENDED BY P.L.127-2012, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Each managing broker company:

(1) shall keep in one (1) or more trust accounts (interest or noninterest bearing) all funds belonging to others that come into the possession of the managing broker company or of any broker whose license the managing broker company is holding; and

(2) shall clearly identify any account containing those funds as a trust account.

The trust accounts shall contain all earnest money deposits, funds held for closing escrows, sale proceeds not yet disbursed, and all other funds belonging to others.

(b) The managing broker company shall not use any trust account for the deposit of any personal funds or other business funds and shall keep a detailed record of the funds and any interest accrued in each trust account that identifies the amount of funds held for each beneficiary. Any interest earned shall be held for the beneficiary.

(c) Upon:

(1) the death of the sole proprietor, in the case of a sole proprietorship broker company; or

(2) the termination of a managing broker company; or

(3) the expiration, revocation, or suspension of the managing broker's a broker company's license;

the commission shall take custody of each trust account of the broker company and may appoint a successor trustee to protect and distribute the proceeds of that account.

SECTION 11. IC 25-34.1-4-6, AS AMENDED BY P.L.127-2012, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) In the event of:



(1) the death of ~~an individual managing the sole proprietor of a sole proprietorship~~ broker **company**; or

(2) the termination of a partnership ~~managing~~ broker **company** by the death of a partner;

a broker formerly associated with the ~~managing~~ broker **company** may continue to carry out business contracted for before the death **of the sole proprietor** or termination of the ~~managing~~ broker **company** for a maximum period of ninety (90) days after the death or termination. During that period, the broker shall maintain a trust account as provided in section 5 of this chapter. However, until associating with another ~~managing~~ broker **company**, the broker may not undertake any new business.

(b) Upon associating with a new ~~managing~~ broker **company**, the broker may conduct on behalf of the deceased **proprietor** or terminated managing broker only that business which is necessary to complete obligations assumed while associated with the ~~managing~~ broker **company**. All other acts performed by the broker shall be performed in association with the new managing broker.

(c) Each broker formerly associated with the deceased or terminated managing broker becomes, upon the death or termination of the managing broker, a managing broker **by law** until the broker elects to act as a broker for another ~~managing~~ broker **company**.

(d) This section applies only to matters of licensing and responsibility under this article and does not affect the transfer of the deceased ~~managing~~ broker's property interests as provided by IC 29 and other laws of succession.

SECTION 12. IC 25-34.1-5-1, AS AMENDED BY P.L.127-2012, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. No person shall conduct, solicit or accept student enrollment for a broker course as prescribed in this chapter without:

(1) the approval of the course by the commission; **and**

(2) the issuance of a permit under section 15 of this chapter.

SECTION 13. IC 25-34.1-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) The **following expire on December 31 of each calendar year:**

(1) The approval of ~~courses~~ a course by the commission.

(2) A permit issued under section 15 of this chapter. ~~expires on the thirty-first day of December of each calendar year.~~

(b) To obtain renewal of approval for the ensuing calendar year, the school must submit to the commission by November 30 of the current year:



- (1) a letter requesting renewal;
- (2) an annual report; and
- (3) a bond in the amount of twenty percent (20%) of the previous year's total tuition, but in no event less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

SECTION 14. IC 25-34.1-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. The commission may deny, suspend, or revoke:

- (1) the approval of any course; and**
- (2) the permit issued to a school under section 15 of this chapter;**

if it determines the school failed to comply with the standards established in this chapter and the commission's ~~regulations~~ **rules**.

SECTION 15. IC 25-34.1-5-15, AS AMENDED BY P.L.2-2014, SECTION 113, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15. (a) Each real estate school **approved under this chapter to conduct a prelicensing broker course** must have a permit issued by the commission.

(b) A real estate school issued a permit under subsection (a) must meet the following requirements:

- (1) For online courses, an instructor that has been issued a permit under this chapter must be available during normal business hours.
- (2) Course rosters must be provided to the commission each month.
- (3) The school must pay the permit fees established by the commission under subsection (d).

(c) ~~The commission shall establish a permit period for real estate schools.~~ **To remain in effect**, a permit issued under this section must be renewed ~~at the end of the period established~~ by the commission **before its expiration under section 7(a) of this chapter**.

(d) The commission shall establish, by rule adopted under IC 4-22-2, fees for permits under this section.

(e) A school must annually file with the commission a list of courses offered by the school.

SECTION 16. IC 25-34.1-6-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) **The mere transporting, transmitting, or delivering of a document related to a real estate transaction does not impose any liability for the content of the document or any statement within the document.**

(b) A licensee is not liable for a report or statement made by a



1 person who has made a report concerning the real estate, including
 2 inspection reports and surveys, unless:

3 (1) the report or statement was made by a person employed
 4 by either the licensee or a broker with whom the licensee is
 5 associated;

6 (2) the report or statement was made by a person selected and
 7 hired by the licensee; however, ordering a report from a
 8 person does not constitute selecting or hiring a person; or

9 (3) the licensee knew before closing occurred that the report
 10 or statement was false or the licensee acted in reckless
 11 disregard as to whether the report or statement was true or
 12 false.

13 (c) A licensee is not liable for the information contained in a
 14 seller's real estate disclosure form prepared under IC 32-21-5,
 15 unless:

16 (1) the licensee signed the disclosure form; or

17 (2) the licensee knew before closing occurred that the
 18 information was false or the licensee acted in reckless
 19 disregard as to whether the information was true or false.

20 (d) A licensee is not liable for the information that was obtained
 21 from:

22 (1) the licensee's client;

23 (2) a governmental entity;

24 (3) a person who obtained the information from a
 25 governmental entity; or

26 (4) a person who is licensed, certified, or registered to provide
 27 professional services on which the licensee relies;

28 unless the licensee knew before closing occurred that the
 29 information was false or the licensee acted in reckless disregard as
 30 to whether the information was true or false.

31 SECTION 17. IC 25-34.1-9-11, AS AMENDED BY P.L.127-2012,
 32 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2014 (RETROACTIVE)]: Sec. 11. (a) The approved
 34 education requirement is as follows:

35 (1) At least twelve (12) hours per year **and at least thirty-six (36)**
 36 **hours per three (3) year renewal cycle** in any of the following
 37 subjects, as determined by the commission:

38 (A) License and escrow law.

39 (B) Anti-trust law.

40 (C) Civil rights law.

41 (D) Agency law.

42 (E) Listing contracts and purchase agreements.



- 1 (F) Ethics and professionals standards.
- 2 (G) Settlement procedures.
- 3 (H) Appraising.
- 4 (I) Property management.
- 5 (J) Farm property management.
- 6 (K) Commercial brokerage and leasing.
- 7 (L) Financing.
- 8 (M) Residential brokerage.
- 9 (N) Land development.
- 10 (O) Legislative issues affecting the real estate practice.
- 11 (P) Other courses approved by the commission.
- 12 (b) An attorney in good standing licensed to practice law in Indiana
- 13 may satisfy the requirements of subsection (a) by completing the
- 14 number of hours required by subsection (a) in continuing legal
- 15 education courses in the subject matters listed in subsection (a).
- 16 (c) An individual who applies for a broker's license after June 30,
- 17 2014, must, during the first two (2) years after the license is issued,
- 18 take and pass at least thirty (30) hours of postlicensing education
- 19 focused on the practical matters of real estate transactions instead of
- 20 the continuing education requirements under this chapter.
- 21 (d) For license renewal, a managing broker must complete at least
- 22 twelve (12) hours of continuing education each year **and at least**
- 23 **thirty-six (36) hours per three (3) year renewal cycle.** At least four
- 24 (4) hours of the continuing education **each year** must be dedicated to
- 25 the necessary business and management skills and legal knowledge
- 26 needed by a managing broker. The commission shall develop or
- 27 approve the continuing education courses for managing brokers.
- 28 SECTION 18. IC 25-34.1-10-6.5 IS AMENDED TO READ AS
- 29 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6.5. As used in this
- 30 chapter, "in-house agency relationship" means an agency relationship
- 31 involving two (2) or more clients who are represented by different
- 32 licensees within the same ~~real estate firm~~ **broker company**.
- 33 SECTION 19. IC 25-34.1-10-12.5, AS AMENDED BY
- 34 P.L.150-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS
- 35 [EFFECTIVE JULY 1, 2015]: Sec. 12.5. (a) An individual licensee
- 36 affiliated with a ~~managing~~ broker **company** represents only the client
- 37 with which the licensee is working in an in-house agency relationship.
- 38 A client represented by an individual licensee affiliated with a
- 39 ~~managing~~ broker **company** is represented only by that licensee to the
- 40 exclusion of all other licensees. A managing broker does not represent
- 41 any party in such transactions unless the managing broker has an
- 42 agency relationship to personally represent a client.



1 (b) A licensee who personally represents both the seller and buyer
 2 or both the landlord and tenant in a real estate transaction is a limited
 3 agent and is required to comply with the provisions of this chapter
 4 governing limited agents.

5 (c) A licensee representing a client in an in-house agency
 6 relationship owes the client duties and obligations set forth in this
 7 chapter and shall not disclose material or confidential information
 8 obtained from the client to other licensees, except to the managing
 9 broker for the purpose of seeking advice or assistance for the client's
 10 benefit.

11 (d) A **broker company**, a managing broker, and any affiliated
 12 licensee shall take reasonable and necessary care to protect any
 13 material or confidential information disclosed by a client to the client's
 14 in-house agent.

15 (e) In all in-house agency relationships, a **broker company**, a
 16 managing broker, and an individual licensee possess only actual
 17 knowledge and information. There is no imputation of agency,
 18 knowledge, or information among or between clients, **the broker**
 19 **company**, the managing broker, and licensees. Information contained
 20 in records of prior transactions maintained by the ~~brokerage or agency~~
 21 **broker company** concerning any existing or previous adverse material
 22 facts or risks with respect to real property may not be imputed to a
 23 broker or affiliated licensee unless the broker or affiliated licensee had
 24 actual knowledge of any adverse material facts or risks with respect to
 25 the real property. A person may not bring a cause of action against a
 26 broker or licensee for failure to disclose adverse material facts or risks
 27 if the cause of action is based on imputed knowledge of the adverse
 28 material facts or risks.

29 SECTION 20. IC 25-34.1-10-13, AS AMENDED BY P.L.127-2012,
 30 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2015]: Sec. 13. (a) A managing broker shall develop and
 32 enforce a **broker company** written office policy that identifies and
 33 describes the agency relationships that a licensee may have with a
 34 seller, landlord, buyer, or tenant and that specifically permits or rejects
 35 the practice of disclosed limited agency.

36 (b) At the beginning of an agency relationship, a licensee shall
 37 disclose in writing the ~~managing broker's~~ **broker company's** written
 38 office policy set forth in this section before the disclosure by the
 39 potential seller, landlord, buyer, or tenant of any confidential
 40 information specific to that potential seller, landlord, buyer, or tenant.

41 (c) Parties to a real estate transaction shall be advised whether
 42 compensation will be shared with other ~~managing brokers who~~ **broker**



1 **companies that** may represent other parties to the transaction whose
 2 interests are different or even adverse.

3 (d) The payment of compensation does not create an agency
 4 relationship between a licensee and a seller, landlord, buyer, or tenant.

5 SECTION 21. IC 27-7-3-15.5, AS AMENDED BY P.L.127-2012,
 6 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2015]: Sec. 15.5. (a) This section applies to the following
 8 transactions:

9 (1) A mortgage transaction (as defined in IC 24-9-3-7(a)) that:

10 (A) is:

11 (i) a first lien purchase money mortgage transaction; or

12 (ii) a refinancing transaction; and

13 (B) is closed by a closing agent after December 31, 2009.

14 (2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:

15 (A) does not involve a mortgage transaction described in
 16 subdivision (1); and

17 (B) is closed by a closing agent (as defined in
 18 IC 6-1.1-12-43(a)(2)) after December 31, 2011.

19 (b) For purposes of this subsection, a person described in this
 20 subsection is involved in a transaction to which this section applies if
 21 the person participates in or assists with, or will participate in or assist
 22 with, a transaction to which this section applies. The department shall
 23 establish and maintain an electronic system for the collection and
 24 storage of the following information, to the extent applicable,
 25 concerning a transaction to which this section applies:

26 (1) In the case of a transaction described in subsection (a)(1), the
 27 name and license number (under IC 23-2-5) of each loan
 28 brokerage business involved in the transaction.

29 (2) In the case of a transaction described in subsection (a)(1), the
 30 name and license or registration number of any mortgage loan
 31 originator who is:

32 (A) either licensed or registered under state or federal law as
 33 a mortgage loan originator consistent with the Secure and Fair
 34 Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221
 35 Title V); and

36 (B) involved in the transaction.

37 (3) The name and license number (under IC 25-34.1) of each:

38 (A) ~~managing~~ broker **company**; and

39 (B) broker if any;

40 involved in the transaction.

41 (4) The following information:

42 (A) The:



- 1 (i) name of; and
- 2 (ii) code assigned by the National Association of Insurance
- 3 Commissioners (NAIC) to;
- 4 each title insurance underwriter involved in the transaction.
- 5 (B) The type of title insurance policy issued in connection with
- 6 the transaction.
- 7 (5) The name and license number (under IC 27-1-15.6) of each
- 8 title insurance agency and agent involved in the transaction as a
- 9 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
- 10 (6) The following information:
- 11 (A) The name and:
- 12 (i) license or certificate number (under IC 25-34.1-3-8) of
- 13 each licensed or certified real estate appraiser; or
- 14 (ii) license number (under IC 25-34.1) of each broker;
- 15 who appraises the property that is the subject of the
- 16 transaction.
- 17 (B) The name and registration number (under
- 18 IC 25-34.1-11-10) of any appraisal management company that
- 19 performs appraisal management services (as defined in
- 20 IC 25-34.1-11-3) in connection with the transaction.
- 21 (7) In the case of a transaction described in subsection (a)(1), the
- 22 name of the creditor and, if the creditor is required to be licensed
- 23 under IC 24-4.4, the license number of the creditor.
- 24 (8) In the case of a transaction described in subsection
- 25 (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is
- 26 the subject of the transaction.
- 27 (9) In the case of a transaction described in subsection
- 28 (a)(1)(A)(i), the following information:
- 29 (A) The name of the buyer of the property that is the subject of
- 30 the transaction.
- 31 (B) The purchase price of the property that is the subject of the
- 32 transaction.
- 33 (C) The loan amount of the mortgage transaction.
- 34 (10) In the case of a transaction described in subsection (a)(2), the
- 35 following information:
- 36 (A) The name of the buyer of the property that is the subject of
- 37 the transaction.
- 38 (B) The purchase price of the property that is the subject of the
- 39 transaction.
- 40 (11) In the case of a transaction described in subsection
- 41 (a)(1)(A)(ii), the following information:
- 42 (A) The name of the borrower in the mortgage transaction.



- 1 (B) The loan amount of the refinancing.
- 2 (12) The:
- 3 (A) name; and
- 4 (B) license number, certificate number, registration number,
- 5 or other code, as appropriate;
- 6 of any other person that is involved in a transaction to which this
- 7 section applies, as the department may prescribe.
- 8 (c) The system established by the department under this section
- 9 must include a form that:
- 10 (1) is uniformly accessible in an electronic format to the closing
- 11 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
- 12 (2) allows the closing agent to do the following:
- 13 (A) Input information identifying the property that is the
- 14 subject of the transaction by lot or parcel number, street
- 15 address, or some other means of identification that the
- 16 department determines:
- 17 (i) is sufficient to identify the property; and
- 18 (ii) is determinable by the closing agent.
- 19 (B) Subject to subsection (d) and to the extent determinable,
- 20 input the applicable information described in subsection (b).
- 21 (C) Respond to the following questions, if applicable:
- 22 (i) "On what date did you receive the closing instructions
- 23 from the creditor in the transaction?"
- 24 (ii) "On what date did the transaction close?"
- 25 (D) Submit the form electronically to a data base maintained
- 26 by the department.
- 27 (d) Not later than the time of the closing, each person described in
- 28 subsection (b), other than a person described in subsection (b)(8),
- 29 (b)(9), (b)(10), or (b)(11), shall provide to the closing agent in the
- 30 transaction the person's:
- 31 (1) legal name; and
- 32 (2) license number, certificate number, registration number, or
- 33 NAIC code, as appropriate;
- 34 to allow the closing agent to comply with subsection (c)(2)(B). In the
- 35 case of a transaction described in subsection (a)(1), the person
- 36 described in subsection (b)(7) shall, with the cooperation of any person
- 37 involved in the transaction and described in subsection (b)(6)(A) or
- 38 (b)(6)(B), provide the information described in subsection (b)(6). In the
- 39 case of a transaction described in subsection (a)(1)(A)(ii), the person
- 40 described in subsection (b)(7) shall also provide the information
- 41 described in subsection (b)(11). A person described in subsection
- 42 (b)(3)(B) who is involved in the transaction may provide the



information required by this subsection for a person described in subsection (b)(3)(A) that serves as the ~~managing~~ broker **company** for the person described in subsection (b)(3)(B). The closing agent shall determine the information described in subsection (b)(8), (b)(9), and (b)(10) from the HUD-1 settlement statement, or in the case of a transaction described in subsection (a)(2), from the contract or any other document executed by the parties in connection with the transaction.

(e) Except for a person described in subsection (b)(8), (b)(9), (b)(10), or (b)(11), a person described in subsection (b) who fails to comply with subsection (d) is subject to a civil penalty of one hundred dollars (\$100) for each closing with respect to which the person fails to comply with subsection (d). The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(f) Subject to subsection (g), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

(g) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

(1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and

(2) contained in the data base described in subsection (c)(2)(D); except to the extent required or authorized by state or federal law.

(h) The department may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section. Rules adopted by the department under this subsection may establish procedures for the department to:

(1) establish;

(2) collect; and

(3) change as necessary;

an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

(i) If the department adopts a rule under IC 4-22-2 to establish an



administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection (h), the department may:

(1) require the fee to be paid:

(A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and

(B) by the borrower, the seller, or the buyer in the transaction;

(2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs in inputting the information and submitting the form described in subsection (c)(2); and

(3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.

SECTION 22. IC 32-28-12.5-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 0.5. As used in this chapter, "broker company" has the meaning set forth in IC 25-34.1-1-2.**

SECTION 23. IC 32-28-12.5-2, AS AMENDED BY P.L.127-2012, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 2. As used in this chapter, "fees or commissions" means compensation owed to a managing broker company for performing services requiring a license under IC 25-34.1-3-2.**

SECTION 24. IC 32-28-12.5-5, AS AMENDED BY P.L.127-2012, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 5. A managing broker company may have a lien upon commercial real estate, or any interest in commercial real estate, that is the subject of a purchase, a lease, or other conveyance to a buyer or tenant, in the amount that the managing broker company is due for licensed services, including brokerage fees, consulting fees, and management fees due the managing broker company under a written agreement, a contract, or another written instrument:**

(1) signed by:

(A) the owner of an interest in the commercial real estate or by the owner's authorized agent; or

(B) a prospective buyer or prospective tenant, or by the buyer's or tenant's authorized agent; and

(2) entered into after June 30, 2006.

A lien under this chapter is available to the managing broker company



1 named in the written agreement, contract, or other written instrument
 2 signed by the owner, buyer, or tenant, or their respective agents, and
 3 not to an employee or independent contractor of the ~~managing~~ broker
 4 **company**.

5 SECTION 25. IC 32-28-12.5-6, AS AMENDED BY P.L.127-2012,
 6 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2015]: Sec. 6. (a) A lien under this chapter attaches to
 8 commercial real estate or an interest in commercial real estate upon:

9 (1) the ~~managing~~ broker **company** being entitled to fees or
 10 commissions under a written agreement, a contract, or another
 11 instrument signed by the owner, buyer, or tenant of the
 12 commercial real estate, or by an authorized agent of the owner,
 13 buyer, or tenant; and

14 (2) except as provided in sections 8 and 9 of this chapter, the
 15 ~~managing~~ broker **company** recording a notice of lien in the office
 16 of the recorder of the county in which the commercial real estate
 17 or an interest in the commercial real estate is located:

18 (A) before the recording of the deed for the actual conveyance
 19 or transfer of the commercial real estate against which the
 20 broker is claiming a lien, if the ~~managing~~ broker **company**
 21 claims fees or commissions from the party conveying or
 22 transferring an interest in the commercial real estate; or

23 (B) not later than ninety (90) days after the recording of the
 24 deed or other instrument for the purchase or other conveyance
 25 or transfer of the commercial real estate, if the ~~managing~~
 26 broker **company** claims fees or commissions from the party
 27 receiving a conveyance or transfer of an interest in the
 28 commercial real estate.

29 (b) A lien under this chapter attaches on the date of the recording of
 30 the notice of the lien under subsection (a)(2) and does not relate back
 31 to the date of the written agreement, contract, or other written
 32 instrument described in subsection (a)(1).

33 SECTION 26. IC 32-28-12.5-7, AS AMENDED BY P.L.127-2012,
 34 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2015]: Sec. 7. (a) This section does not apply:

36 (1) to fees or commissions that arise from a lease, including fees
 37 or commissions for a sale of the property, lease expansions, or
 38 lease renewals;

39 (2) if a ~~managing broker's~~ broker **company's** fees or
 40 commissions have been paid in full; or

41 (3) if a ~~managing~~ broker **company** waives the notice requirements
 42 of this section in writing.



(b) Not later than ten (10) days before the planned closing of a transaction involving the sale of commercial real estate, the owner shall notify the following persons of the date of the closing, the time of the closing, the address of the closing, and of the name of the closing agent, title company, or title insurance agent:

(1) One (1) or more **managing brokers broker companies** to whom the owner owes fees or commissions.

(2) The closing agent, title company, or title insurance agent involved in the transaction.

Notice under this subsection shall be sent by registered or certified mail, return receipt requested, or by another means of service authorized by the Indiana trial rules that provides proof that the addressee has received the notice.

(c) To exercise its rights under this chapter to file a lien after receipt of the notice under subsection (b), the **managing broker company** must notify the closing agent, title company, or title insurance agent at the address in the notice of the amount of the fees or commissions owed before the time of the closing stated in the notice.

(d) If the **managing broker company** does not attend the closing of a transaction involving the sale of commercial real estate, the owner shall certify in writing at the closing, under the penalties of perjury:

(1) that:

(A) the owner has notified the **managing broker company** in accordance with subsection (b); and

(B) the **managing broker company** received the notice; or

(2) that the **managing broker company** has been paid in full.

SECTION 27. IC 32-28-12.5-8, AS AMENDED BY P.L.127-2012, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) This section applies to a transaction involving the conveyance or transfer of commercial real estate in which:

(1) payment to a **managing broker company** is due in installments; and

(2) a part of the installment payments is due only after the conveyance or transfer of the commercial real estate involved in the transaction.

(b) Subject to subsection (c), the **managing broker company** may record a notice of lien for those payments described in subsection (a)(2) at any time after the transfer or conveyance, but not later than ninety (90) days after the date on which the payment is due. A notice of lien under this section is effective as a lien against the transferor's interest in the commercial real estate only to the extent consideration



1 is still owed to the transferor by the transferee. However, the lien is
 2 effective against the transferee's interest in the commercial real estate
 3 without the limitation described in this subsection.

4 (c) A single claim for a lien recorded:

5 (1) before the transfer or conveyance of the commercial real
 6 estate; and

7 (2) with respect to all payments due in installments;

8 is valid and enforceable with respect to payments due after the transfer
 9 or conveyance. However, as payments or partial payments of fees or
 10 commissions are received by the ~~managing~~ broker **company**, the
 11 ~~managing~~ broker **company** shall, by providing partial releases with
 12 respect to those payments, reduce the amount due the ~~managing~~ broker
 13 **company** under the notice of lien described in this subsection.

14 SECTION 28. IC 32-28-12.5-9, AS AMENDED BY P.L.127-2012,
 15 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2015]: Sec. 9. (a) Subject to subsection (b), in the case of a
 17 lease of commercial real estate, including a sublease or an assignment
 18 of a lease, the notice of a lien under this chapter must be recorded not
 19 later than ninety (90) days after the tenant takes possession of the
 20 leased premises. However, if:

21 (1) the transferor personally serves, on the ~~managing~~ broker
 22 **company** entitled to claim a lien, written notice of the intended
 23 execution of the lease; and

24 (2) the notice described in subdivision (1) is served not later than
 25 ten (10) days before the date of the intended execution of the
 26 lease;

27 the ~~managing broker's~~ **broker company's** notice of lien must be
 28 recorded before the date indicated in the notice described in
 29 subdivision (1) for the execution of the lease. The lien attaches on the
 30 recording of the notice of lien and does not relate back to the date of
 31 the written agreement, contract, or written instrument under which the
 32 ~~managing~~ broker **company** is entitled to fees or commissions.

33 (b) As used in this subsection, "future fees or commissions" refers
 34 to fees or commissions:

35 (1) other than those fees or commissions due to a ~~managing~~
 36 broker **company** upon the execution of a lease under subsection
 37 (a); or

38 (2) due to the ~~managing~~ broker **company** upon the exercise of an
 39 option to:

40 (A) expand the leased premises;

41 (B) renew or extend a lease; or

42 (C) purchase the commercial real estate;



1 under a written agreement, a contract, or another written instrument
 2 signed by the owner or tenant of the commercial real estate. The
 3 **managing broker company** may record a memorandum of lien at any
 4 time after execution of the lease or other written agreement, contract,
 5 or written instrument that contains rights to future fees or commissions.
 6 The **managing broker company** shall record a notice of lien no later
 7 than ninety (90) days after the occurrence of a condition for which
 8 future fees or commissions are claimed, but may not file a notice of lien
 9 against an owner's property if the tenant is the sole party liable for
 10 payment of the future fees or commissions. Except as provided in
 11 section 11(a) or 13(b) of this chapter, an action to foreclose a lien to
 12 collect future fees or commissions must be commenced not later than
 13 one (1) year after the recording of the notice of the lien. A
 14 memorandum of lien recorded under this chapter must meet the
 15 requirements of section 12(1)(A), 12(1)(B), 12(1)(C), 12(1)(E), 12(2),
 16 12(3), and 12(4) of this chapter. A memorandum of lien shall not
 17 constitute a lien against the real estate but shall provide notice of the
 18 right to future fees or commissions.

19 (c) If:

- 20 (1) commercial real estate is sold or otherwise conveyed before
- 21 the date on which future fees or commissions are due; and
- 22 (2) the **managing broker company** has recorded a valid
- 23 memorandum of lien or notice of lien before the sale or other
- 24 conveyance of the commercial real estate;

25 the purchaser or transferee is considered to have notice of and takes
 26 title to the commercial real estate subject to the right to future fees or
 27 commissions and, if applicable, notice of lien. However, if a **managing**
 28 **broker company** claiming future fees or commissions fails to record a
 29 memorandum of lien or notice of lien for the future fees or
 30 commissions before the recording of a deed conveying legal title to the
 31 commercial real estate to the purchaser or transferee, the **managing**
 32 **broker company** may not claim a lien on the commercial real estate.
 33 This subsection does not limit or otherwise affect claims or defenses a
 34 **managing broker company** or owner or any other party may have in
 35 law or equity.

36 SECTION 29. IC 32-28-12.5-10, AS AMENDED BY P.L.127-2012,
 37 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2015]: Sec. 10. A **managing broker company** shall, not later
 39 than ten (10) days after recording a notice of lien under this chapter,
 40 personally serve or mail, by registered or certified mail, a copy of the
 41 notice of lien to the owner of record of the commercial real estate, or
 42 to the agent of the owner of record, at the address of the owner stated



1 in the written agreement, contract, or other written instrument on which
 2 the claim for the lien is based. If the address of the owner or the
 3 owner's agent is not stated, the ~~managing~~ broker **company** shall
 4 personally serve or mail, by registered or certified mail, a copy of the
 5 notice of the lien to the address where real estate taxes are sent for the
 6 commercial real estate on which the claim of lien is based. Mailing of
 7 the copy of the notice of lien is effective when deposited in the United
 8 States mail with postage prepaid. Personal service of the notice of the
 9 lien is effective upon receipt by the owner or the agent of the owner of
 10 record. A ~~managing broker's~~ **broker company's** lien is unenforceable
 11 if mailing or service of the copy of notice of lien does not occur at the
 12 time and in the manner required by this section.

13 SECTION 30. IC 32-28-12.5-11, AS AMENDED BY P.L.127-2012,
 14 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2015]: Sec. 11. (a) The ~~managing~~ broker **company** claiming
 16 the lien shall, not later than one (1) year after recording the notice of
 17 the lien, commence proceedings to foreclose the lien. However, for
 18 future fees or commissions payable over a period in excess of one (1)
 19 year from the occurrence of a condition for which such future fees or
 20 commissions are claimed, the commencement of the suit must be
 21 within one (1) year of the latest date for which future fees or
 22 commissions are due. A ~~managing broker's~~ **broker company's** failure
 23 to commence proceedings within the time prescribed by this subsection
 24 extinguishes the lien and a subsequent notice of lien may not be given
 25 for the same claim, nor may that claim be asserted in any other
 26 proceedings under this chapter.

27 (b) A ~~managing~~ broker **company** claiming a lien based upon an
 28 option or other right to purchase or lease commercial real estate shall,
 29 not later than one (1) year after recording the notice of the lien,
 30 commence proceedings to foreclose the lien. A ~~managing broker's~~
 31 **broker company's** failure to commence proceedings within the time
 32 prescribed by this subsection extinguishes the lien and a subsequent
 33 notice of lien may not be given for the same claim, nor may that claim
 34 be asserted in any other proceedings under this chapter.

35 (c) The foreclosure of a lien recorded under this chapter shall be
 36 conducted under the same rules and same procedures applicable to the
 37 foreclosure of mortgages upon real estate. A complaint under this
 38 section must contain:

- 39 (1) a brief statement of the written agreement, contract, or other
- 40 written instrument that is the basis for the lien;
- 41 (2) the date when the written agreement, contract, or other written
- 42 instrument was made;



- (3) a description of the services performed by the ~~managing~~ broker **company**;
- (4) the amount due and unpaid for the services described in subdivision (3);
- (5) a description of the commercial real estate subject to the notice of lien; and
- (6) other facts reasonably necessary to describe the rights of the parties.

SECTION 31. IC 32-28-12.5-12, AS AMENDED BY P.L.127-2012, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. A notice of lien recorded under this chapter must:

- (1) state:
 - (A) the name of the claimant;
 - (B) the name of the owner of the commercial real estate upon which the lien is claimed;
 - (C) a legal description of the commercial real estate upon which the lien is claimed;
 - (D) the amount for which the lien is claimed; and
 - (E) the license number of the ~~managing broker's~~ **broker company's** license under IC 25-34.1;
- (2) contain a statement that the information contained in the notice is true and accurate to the knowledge of the signatory;
- (3) be signed by the managing broker **responsible for the actions of the broker company** or by a person authorized to sign on behalf of the managing broker; and
- (4) be verified.

SECTION 32. IC 32-28-12.5-13, AS AMENDED BY P.L.127-2012, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. (a) If:

- (1) a memorandum of lien or notice of lien has been recorded with the office of the recorder of the appropriate county; and
- (2) a condition occurs that would preclude the ~~managing~~ broker **company** from receiving fees or commissions under the terms of the written agreement, contract, or other written instrument upon which the lien is based;

the ~~managing~~ broker **company** shall provide to the owner of record of the commercial real estate, not later than ten (10) days after written demand by the owner of record, a written release or satisfaction of the memorandum of lien or notice of lien.

(b) Upon written demand:

- (1) served by the owner, buyer, or tenant described in section 5 of



1 this chapter, or the authorized agent of the owner, buyer, or tenant
 2 described in section 5 of this chapter, on the ~~managing~~ broker
 3 **company** claiming a lien under this chapter; and

4 (2) requiring the ~~managing~~ broker **company** to:

5 (A) bring a suit to enforce the lien; or

6 (B) file an answer in a pending suit;

7 the ~~managing~~ broker **company** shall bring a suit or file an answer not
 8 later than thirty (30) days after service of the demand. If the ~~managing~~
 9 broker **company** does not bring a suit or file an answer within the time
 10 prescribed by this subsection, the lien is extinguished. The service of
 11 a written demand under this subsection may be made by registered or
 12 certified mail, return receipt requested, or by personal service.

13 (c) If:

14 (1) a memorandum of lien or notice of lien under this chapter has
 15 been filed with the office of the recorder and the fees or
 16 commissions upon which the lien is based have been paid to the
 17 ~~managing~~ broker **company** claiming the lien; or

18 (2) the ~~managing~~ broker **company** fails to institute a suit to
 19 enforce the lien within the time prescribed by this chapter;

20 the ~~managing~~ broker **company** shall, not later than five (5) days after
 21 receipt of a written demand from the owner, buyer, or tenant described
 22 in section 5 of this chapter for a release or an acknowledgment of
 23 satisfaction of the memorandum or lien, acknowledge satisfaction or
 24 release of the memorandum or lien in writing.

25 SECTION 33. IC 32-28-12.5-14, AS AMENDED BY P.L.127-2012,
 26 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2015]: Sec. 14. If the ~~managing~~ broker **company** and the party
 28 from whom fees or commissions are claimed under this chapter agree
 29 to alternative dispute resolution, any claim under this chapter must be
 30 heard and resolved in the forum agreed to by the parties. The court
 31 before which a lien foreclosure proceeding is brought under this
 32 chapter retains jurisdiction to enter judgment on the award or other
 33 result made or reached under alternative dispute resolution proceedings
 34 with respect to all parties to the foreclosure. The ~~managing broker's~~
 35 **broker company's** notice of lien remains of record and the foreclosure
 36 proceeding shall be stayed during the pendency of the alternative
 37 dispute resolution proceedings.

38 SECTION 34. IC 32-28-12.5-16, AS AMENDED BY P.L.127-2012,
 39 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2015]: Sec. 16. Except for a waiver or release of a
 41 memorandum or lien provided in consideration of payment of the fees
 42 or commissions claimed by a ~~managing~~ broker **company** under this



chapter, or except as otherwise provided in section 13 of this chapter, any waiver of a **managing broker's broker company's** right to a lien on commercial property under this chapter is void.

SECTION 35. IC 32-28-12.5-18, AS AMENDED BY P.L.127-2012, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. If:

(1) a claim for a lien under this chapter has been filed with the office of the recorder of the county in which commercial real estate or any interest in commercial real estate is located; and

(2) an escrow account is established among:

(A) the one (1) or more parties allegedly responsible for payment of the fees or commissions on which the lien is based;

(B) the **managing broker company** that filed the lien; and

(C) an independent third party as escrowee;

from the proceeds of the conveyance, or from any other source of funds, in an amount that is at least one hundred ten percent (110%) of the amount of the lien claimed under this chapter;

the lien against the real estate is extinguished and becomes a lien on the funds contained in the escrow account. The establishment of an escrow account described in this section does not constitute cause for any party to refuse to close the transaction.

SECTION 36. IC 32-28-12.5-19, AS AMENDED BY P.L.127-2012, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 19. (a) If any party, including a **managing broker company**, buyer, or buyer's mortgagee suffers a pecuniary loss as the result of an owner's violation of the notice or certification provisions described in section 7 of this chapter, the party may bring a civil action against the owner for the following:

(1) Actual damages.

(2) The costs of the action.

(3) Reasonable attorney's fees.

However, if the party establishes that the owner's violation of the notice or certification provisions was fraudulent, a court may award the party damages that do not exceed three (3) times actual damages.

(b) It is a defense to an action brought under this section that the most recent address provided by the **managing broker company** to the owner in the agreement, contract, or other written instrument, including a written instrument described in section 5 of this chapter, was incorrect, and as a result of the incorrect address, the principal broker did not receive the owner's notice described in section 7(b) of this chapter, and as a result the **managing broker company** failed to provide the notice as required in section 7(c) of this chapter.



1 SECTION 37. IC 34-30-2-60.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2015]: **Sec. 60.7. IC 25-34.1-6-4 (Concerning**
4 **licensed brokers for certain reports, statements, and information).**
5 SECTION 38. **An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 408, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, delete lines 15 through 32.

Page 7, delete lines 33 through 41.

Page 8, delete lines 33 through 42.

Page 9, delete lines 1 through 19, begin a new paragraph and insert:

"SECTION 9. IC 25-34.1-4-6, AS AMENDED BY P.L.127-2012, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) In the event of the death of an individual managing broker or the termination of a partnership managing broker by the death of a partner, a broker formerly associated with the managing broker may continue to carry out business contracted for before the death or termination of the managing broker, for a maximum period of ninety (90) days after the death or termination. During that period, the broker shall maintain a trust account as provided in section 5 of this chapter. However, until associating with another managing broker, the broker may not undertake any new business.

(b) Upon associating with a new managing broker, the broker may conduct on behalf of the deceased or terminated managing broker only that business which is necessary to complete obligations assumed while associated with the managing broker. All other acts performed by the broker shall be performed in association with the new managing broker.

(c) Each broker formerly associated with the deceased or terminated managing broker becomes, upon the death or termination of the managing broker, a managing broker **by law** until the broker elects to act as a broker for another managing broker.

(d) This section applies only to matters of licensing and responsibility under this article and does not affect the transfer of the deceased managing broker's property interests as provided by IC 29 and other laws of succession."

Page 10, line 31, delete "2015]" and insert "2014 (RETROACTIVE)]".

Page 10, line 34, after "year" insert "**renewal**".



Page 11, line 21, after "year" insert "**renewal**".
 Page 11, line 22, after "education" insert "**each year**".
 Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 408 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 408 be amended to read as follows:

Page 4, line 29, after "broker" insert ":".

Page 6, between lines 14 and 15, begin a new paragraph and insert:
 "SECTION 3. IC 25-34.1-3-5, AS AMENDED BY P.L.127-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) A resident of another state ~~meeting who meets~~ the requirements of this chapter may be licensed.

(b) A nonresident broker shall file with the commission a written consent that any action arising out of the conduct of the licensee's business in Indiana may be commenced in any county of this state in which the cause of action accrues. The consent shall provide that service of process may be made upon the commission, as agent for the nonresident licensee, and that service in accordance with the Indiana Rules of Trial Procedure subjects the licensee to the jurisdiction of the courts in that county.

(c) The requirements of ~~this section~~ **subsections (a) and (b)** may be waived for individuals ~~of who reside in~~ or **are** moving from other jurisdictions if the following requirements are met:

- (1) The jurisdiction grants the same privilege to the licensees of this state.
- (2) The individual is licensed in that jurisdiction.
- (3) The licensing requirements of that jurisdiction are substantially similar to the requirements of this chapter.
- (4) The applicant states that the applicant has studied, is familiar with, and will abide by the statutes and rules of this state.

However, subdivision (1) need not be met in order for the requirements of subsections (a) and (b) to be waived in the case of



an individual moving to Indiana from another jurisdiction."

Page 7, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 7. IC 25-34.1-4-3.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014 (RETROACTIVE)]: **Sec. 3.1. An individual who, on June 30, 2014, was:**

(1) a principal broker; or

(2) the designated individual broker under IC 25-34.1-4-2 (as in effect on June 30, 2014) of a partnership broker, corporate broker, or limited liability company broker;

became a managing broker on July 1, 2014."

Page 8, delete lines 6 through 30, begin a new paragraph and insert:

"SECTION 11. IC 25-34.1-4-6, AS AMENDED BY P.L.127-2012, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) In the event of:

(1) the death of an individual managing the sole proprietor of a sole proprietorship broker company; or

(2) the termination of a partnership managing broker company by the death of a partner;

a broker formerly associated with the ~~managing~~ broker **company** may continue to carry out business contracted for before the death **of the sole proprietor** or termination of the ~~managing~~ broker **company** for a maximum period of ninety (90) days after the death or termination. During that period, the broker shall maintain a trust account as provided in section 5 of this chapter. However, until associating with another ~~managing~~ broker **company**, the broker may not undertake any new business.

(b) Upon associating with a new ~~managing~~ broker **company**, the broker may conduct on behalf of the deceased **proprietor** or terminated managing broker only that business which is necessary to complete obligations assumed while associated with the ~~managing~~ broker **company**. All other acts performed by the broker shall be performed in association with the new managing broker.

(c) Each broker formerly associated with the deceased or terminated managing broker becomes, upon the death or termination of the managing broker, a managing broker **by law** until the broker elects to act as a broker for another ~~managing~~ broker **company**.

(d) This section applies only to matters of licensing and



responsibility under this article and does not affect the transfer of the deceased ~~managing~~ broker's property interests as provided by IC 29 and other laws of succession."

Renumber all SECTIONS consecutively.

(Reference is to SB 408 as printed January 21, 2015.)

MERRITT

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Small Business and Economic Development, to which was referred Senate Bill 408, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 5, delete ":".

Page 4, strike lines 6 through 9.

Page 4, line 10, strike "(B)".

Page 4, line 29, delete ":".

Page 4, strike lines 30 through 33.

Page 4, line 34, strike "(B)".

Page 10, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 16. IC 25-34.1-6-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 4. (a) The mere transporting, transmitting, or delivering of a document related to a real estate transaction does not impose any liability for the content of the document or any statement within the document.**

(b) A licensee is not liable for a report or statement made by a person who has made a report concerning the real estate, including inspection reports and surveys, unless:

(1) the report or statement was made by a person employed by either the licensee or a broker with whom the licensee is associated;

(2) the report or statement was made by a person selected and hired by the licensee; however, ordering a report from a person does not constitute selecting or hiring a person; or

(3) the licensee knew before closing occurred that the report or statement was false or the licensee acted in reckless disregard as to whether the report or statement was true or false.



(c) A licensee is not liable for the information contained in a seller's real estate disclosure form prepared under IC 32-21-5, unless:

- (1) the licensee signed the disclosure form; or
- (2) the licensee knew before closing occurred that the information was false or the licensee acted in reckless disregard as to whether the information was true or false.

(d) A licensee is not liable for the information that was obtained from:

- (1) the licensee's client;
- (2) a governmental entity;
- (3) a person who obtained the information from a governmental entity; or
- (4) a person who is licensed, certified, or registered to provide professional services on which the licensee relies;

unless the licensee knew before closing occurred that the information was false or the licensee acted in reckless disregard as to whether the information was true or false."

Page 10, line 40, reset in roman "twelve (12)".

Page 10, line 40, delete "eight (8)".

Page 11, line 27, reset in roman "twelve (12)".

Page 11, line 27, delete "eight (8)".

Page 26, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 37. IC 34-30-2-60.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 60.7. IC 25-34.1-6-4 (Concerning licensed brokers for certain reports, statements, and information).**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 408 as reprinted February 4, 2015.)

SMALTZ

Committee Vote: yeas 11, nays 0.

